

SENATE BILL 90
By Kurita

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 5, Part 1, relative to the board of dentistry.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 5, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section _____. (a)

(1) The board may utilize one (1) or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious, and to act as a mechanism for diversion, to professional peer review organizations and/or impaired professionals associations or foundations, those cases which the board, through established guidelines, deems appropriate; upon diversion, such entities shall retain the same immunity as provided by law for the board.

(2) The screening panels shall consist of as many members as the board directs, but shall include at least one (1) but no more than three (3) practicing dentists, who may be members of the board or may serve either voluntarily or through employment by or under contract with the board;

(3) The activities of the screening panels, and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the open meetings act and shall remain confidential. The members of the screening panels, mediators and arbitrators have a deliberative privilege and the same immunity as provided by law for the board, and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution or civil lawsuit which may result from or be incident to cases processed before them.

(b) Notwithstanding any provision of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to the contrary, hearing officers are authorized to, and may hear board mediation, arbitration or disciplinary contested cases, but may not issue final orders in contested case matters. Notwithstanding any of the provisions of §§ 4-5-314 and 4-5-315, which may be or are inconsistent, such hearing officers may only issue findings and conclusions which shall be referred directly to the board or a duly constituted panel thereof for final action. The board or duly constituted panel, after hearing testimony and arguments from both parties regarding the appropriate disciplinary action and, if allowed by the board, arguments on any controversy raised by the hearing officer's or designee's order, shall issue a final order to include the imposition of what, if any, disciplinary action is deemed appropriate. Only the board or a duly constituted panel thereof shall have the authority to issue final orders which dispose of a pending contested case regardless of whether the issues resulting in the dispositive action are procedural, substantive, factual or legal. If a hearing officer is not available when a contested case, or any motion filed therein requiring action, is ready and scheduled to be heard or fails to timely prepare findings and conclusions pursuant to board established guidelines, the board or a duly constituted panel thereof may rule on the motions and/or hear the contested case or utilize the record compiled before the

hearing officers and prepare its own findings of fact and conclusions of law and then issue a final order. With regard to findings of fact and conclusions of law issued by the hearing officer, or any mediator or arbitrator, the board or any duly constituted panel thereof which reviews the case may do any of the following:

(1) Adopt the hearing officer's, mediator's or arbitrator's findings of fact and conclusions of law, in whole or in part;

(2) Make its own findings of fact and conclusions of law, based solely on the record and the expertise of the members of the board or panel, in addition to or in substitution of those made by the hearing officer, mediator or arbitrator;

(3) Remand the matter back to the hearing officer, mediator or arbitrator for action consistent with the board or panel findings and conclusions in the matter; or

(4) Reverse the hearing officer's, mediator's or arbitrator's findings and/or dismiss the matter entirely.

(c) The board retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section in compliance with procedures established by the board. The board, pursuant to duly promulgated rules, may, whenever a final order is issued after a disciplinary contested case hearing which contains findings that a licensee, person registered under this chapter, or other person has violated any provision of this chapter, assess the costs directly related to the prosecution of the case against the licensee or person.

(d) Any member of the board, or any duly appointed or elected chair of any panel of the board, or any screening panel, and any hearing officer, arbitrator or mediator has the authority to administer oaths to witnesses, and upon probable cause being established, issue subpoenas for the attendance of witnesses and the production of documents and records.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.